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1984/85

LAW REFORM COMMISSION OF BRITISH COLUMBIA

MINISTRY OF ATTORNEY GENERAL

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LRC 80

The Law Reform Commission of British Columbia was established by the *Law Reform Commission Act* in 1969 and began functioning in 1970.

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To the Honourable Brian R.D. Smith, Q.C.
Attorney General of the Province of British Columbia

The Law Reform Commission of British Columbia has the honour to present its Annual Report for 1984/85. It outlines the progress made by the Commission during the period from April 1, 1984 to March 31, 1985.

I INTRODUCTION

The Law Reform Commission of British Columbia was created by the *Law Reform Commission Act*, S.B.C. 1969, c. 14 and it commenced operation in 1970. The function of the Commission is set out in section 2 of the Act:

> The Commission is to take and keep under review all the law in the Province including statute law, common law and judicial decisions, with a view to its systematic development and reform, including the codification, elimination of anomalies, repeal of obsolete and unnecessary enactments, reduction in the number of separate enactments and generally the simplification and modernization of the law. . . .

The Commission's approach to this mandate has been described in its previous Annual Reports.

During the period under review, 6 final Reports were submitted to you on the following topics:

Covenants in Restraint of Trade
Review of Civil Jury Awards
Compensation for Non-Pecuniary Loss
Settlement Offers
The Authority of a Guardian
A Short Form General Power of Attorney

During the past year the Commission also circulated three Working Papers which have not yet resulted in final Reports. These Working Papers are on the following topics:

Performance Under Protest
Mortgages of Land: The Priority of Further Advances
Personal Liability under a Mortgage or Agreement for Sale

II PERSONALIA

As presently constituted the Commission consists of three members: Arthur L. Close, Chairman; Professor Ronald I. Cheffins, Q.C., Vice-Chairman; and Miss Mary Newbury. A significant change in the composition of the Commission occurred in October 1984. This change saw the departure of two former members of the Commission, the appointment of Miss Newbury as a Commissioner and the designation of Messrs. Close and Cheffins as Chairman and Vice-Chairman respectively. Both Professor Cheffins and Miss Newbury serve on a part-time basis.

The two former members of the Commission referred to above are Mr. Bryan Williams, Q.C. and Professor Anthony F. Sheppard. Both were appointed as members of the Commission in 1979 and served for five years. Both made notable contributions to our work. Mr. Williams brought to our deliberations a wealth of experience as senior counsel. His intuitive grasp of complex issues combined with a keen appreciation of the practical con-

sequences of law reform measures made him a tower of strength in our deliberations. Professor Sheppard brought to our work a scholarly overview and a keen eye for detail which contributed significantly to its credibility. Both were concerned that our recommendations should be humane and workable responses to the issues which we confronted. Their advice will be greatly missed.

III REFLECTIONS ON 1984/85

The work of the Law Reform Commission during the first part of the year under review was shaped by an awareness that the Commission was soon to enter a period of transition. All Commission members were conscious of the fact that a majority of the Orders-in-Council under which they were appointed would expire in October 1984. They would be succeeded by a Commmission whose membership had yet to be determined. Priority was, therefore, given to the completion of certain projects in which work was well advanced. It was considered important to leave the program in good order and to minimize any transitional difficulties that might arise. The Commission achieved its aims in this regard. Three major Reports were settled in September, 1984.

During the second half of the year under review our attention was focused on work still in its preliminary stages, the future content of the Commission's program, and the implementation of past Commission recommendations. These developments are described more fully elsewhere in this Report.

Previous Annual Reports have described the generous response of the Law Foundation of British Columbia to the Commission's requests for funding assistance to sustain its operations. In the past year it was again necessary to approach the Foundation for assistance with respect to our 1985/86 financial year. As before, the Foundation responded generously. We are grateful to the Foundation for its commitment to the work of the Commission.

IV THE PROGRAM

A. CARRYING OUT THE PROGRAM

1. Research and Writing

The research to carry out the program calls for time-consuming work by qualified people. This can be achieved by having the research done by personnel who are employed full-time or by persons with special expertise who are retained on a part-time or occasional basis. Although in the early years, the Commission relied heavily on outside consultants, our experience has led to a preference for the former approach. Consequently, most of the research and writing is now conducted by full-time members of the Commission staff.

2. The Consultation Process

The Commission makes a general practice of inviting comment and criticism of its research and analysis before submitting a formal Report on any particular subject. This process of consultation greatly assists the Commission in developing recommendations for the reform of the law that are both relevant and sound.

The chief means by which the Commission carries out this process is through the circulation of Working Papers to those who are knowledgeable, or who have a special interest in the subject under study. A Working Paper sets

out the tentative views of the Commission and outlines the background against which these views were formed. Comment on any aspect of the Working Paper is invited. Occasionally, copies of a draft Report may be given limited circulation for comment, if the topic under consideration makes the wide circulation of a Working Paper inappropriate.

The Commission has been making increasing use of "round-table" meetings with persons and groups who have responded to our Working Papers. In the past year such meetings were held with respect to our work on Compensation for Non-Pecuniary Loss and Performance Under Protest. Both of these meetings resulted in a lively and informative exchange of views.

Whatever consultative mechanism is adopted, the Commission thoroughly re-examines its tentative conclusions in the light of the comment and criticism received. Final recommendations are developed accordingly.

B. THE PROJECTS

The description below is limited to those projects upon which Reports have been made in the past year or upon which work is in progress. Details of other Reports may be found in earlier Annual Reports. Included as Appendix A is a table setting out all Reports which the Commission has made to date, and references to legislation in which the recommendations have been implemented in whole or in part. In Appendix B, another table sets out those matters which are now under consideration.

1. Debtor-Creditor Relationship Topics

(a) *Court Order Interest Act*

Early in 1983, the former Attorney General requested that the Commission "undertake a review of the *Court Order Interest Act* and, in conjunction with an examination of the *Uniform Judgment Interest Act*, consider whether all or parts of the Uniform Act should be incorporated in our legislation."

Significant progress was made on this topic during the past year. A close examination of the law and practice under the *Court Order Interest Act* has revealed a myriad of issues which call for consideration. A major portion of the time of one of our professional staff members has been devoted to the preparation of a Working Paper on this subject under the direction of the Commission. This process is now in its final stages and we expect to circulate a Working Paper in May 1985.

(b) *Shared Liability*

There are a number of ways in which two or more persons may become concurrently liable to satisfy a debt, pay damages or perform an obligation to or for a third party. The concurrent obligations need not necessarily be imposed on a common legal basis. One of the persons might be liable in tort and the other in contract or by reason of a breach of a statutory duty. The law respecting the rights of persons who may share liability to a third party both as against that third party and as against each other, is complex and highly technical.

In this project the Commission is examining a number of issues of concern in cases of concurrent liability. In particular, the utility of the present distinction between joint and several liability is of concern. This distinction can be crucial in two respects: first, a judgment obtained against one of a number of defendants jointly liable will bar any action against other possible

defendants, while if liability is several no such bar exists; and, second, if defendants are jointly liable execution may be taken against any defendant for the whole of the damage award.

We are also examining the impact of the *Negligence Act* on apportionment of liability and rights of contribution, having particular regard to the provisions of the *Uniform Contributory Fault Act* recently promulgated by the Uniform Law Conference.

The procedural rules governing the joinder of parties are also being considered with a view to ensuring that, so far as is practicable, no substantive difference will result depending on the manner in which a person jointly liable comes to be a party to the litigation.

Significant progress has been made on this project in the past year and the development of a Working Paper is in its final stages. We hope to circulate that Working Paper in the summer of 1985.

(c) *Execution Against Shares and Securities*

The Study Paper on the *Office of the Sheriff* published by the Commission in 1983 identified a number of problems which arise out of the body of law which currently governs the seizure and sale of shares and securities by an execution creditor. These problems are both substantive and procedural. What interests in shares are exigible? What is the status of shares in extra-provincial companies? What is the status of a charging order? What is the appropriate method of seizure? How may shares in closely held corporations be valued? What method of sale may the sheriff employ? Recent litigation has highlighted some of these problems.

Late in 1984 the Commission engaged Professor Elizabeth Edinger of the Faculty of Law, University of British Columbia to prepare a research document on this topic which will explore ways in which the present state of the law can be clarified where needed and altered where desirable. We expect this phase of the project to be completed by the autumn of 1985 at which time its future course will be considered.

(d) *Reviewable Transactions*

This project comprises a study on the operation of the *Fraudulent Conveyance Act* and *Fraudulent Preference Act*. Background research on the law respecting the current operation of these Acts is far advanced, but much work remains to be done. Significant progress was made on the preparation of a draft Working Paper during the past year, but we are not yet in a position to predict with confidence when it will finally emerge.

(e) *Set-Off Against Equitable Assignees*

When "A" attempts to enforce payment of a debt owing to him by "B" it is regarded as fundamentally fair that "B" should be entitled to have taken into account any money owing from "A" to "B." This is generally referred to as a right of "set-off." In general, the body of law which governs set-off is satisfactory. There is, however, one instance in which the right of set-off is limited and, arguably, operates unfairly.

Where the right to payment of a debt has been assigned, a right of set-off can be asserted against the assignee only where the obligation on which the set-off is based was in existence before the assignment. That rule is unobjec-

tionable where the assignor and assignee were dealing at arm's length and for value and the debtor received notice of the assignment. Where, however, the assignment is a reflection of the assignor's insolvency and the assignee is his trustee or receiver, the situation is somewhat different and the application of this rule in not wholly satisfactory, (*see Business Computers Ltd.* v. *Anglo African Leasing*, [1977] 2 All E.R. 741, and *C.I.B.C.* v. *Tuckerr Industries Inc.*, (1982) 44 C.B.R. 215 (B.C.S.C.)

This project, added to our program in 1985, will examine the operation of set-off in these circumstances.

2. Compensation for Non-Pecuniary Loss

This project, which was undertaken at the request of the former Attorney General, concerns the "rough upper limit" of $100,000 on damages for pain, suffering and loss of amenities in personal injury actions said to be established by the "trilogy" of Supreme Court of Canada cases decided in 1978.

The Commission submitted its final Report on this topic in September 1985. The Report thoroughly reviews the rationale for, and impact of, the upper limit. A majority of Commissioners found no merit in retaining the upper limit and recommended its abolition.

3. The Applicability of English Statute Law

Section 2 of the *Law and Equity Act*, R.S.B.C. 1979, c. 224 provides that the laws of England, as they existed on November 19, 1858 are in force in British Columbia to the extent that they are not inapplicable through local circumstances and have not been repealed or superseded by federal or provincial legislation. It follows from this that an uncertain number of English statutes are in force in this Province.

For many years the Commission has had, as part of its program, a project aimed at introducing a degree of certainty concerning the extent to which English statute law is in force here. The hope was to identify those statutes which are in force with a view to rationalizing this aspect of our statute law.

This had always been recognized as a long-term project and much of our work has been devoted to gathering background information. Considerable progress was made in organizing these materials, and a preliminary list of statutes has been established.

Unfortunately, the pressure of other Commission work has prevented the allocation of a significant portion of the Commission's resources to the completion of this project. It has always been our hope that we would be in a position to do so at some future time but it has become increasingly clear that, at least for the foreseeable future, no work can be undertaken on this project which will culminate in a formal Commission Report.

Accordingly, we have reconstituted this project with a more modest aim in mind. We hope to recast the results of our work in the form of a Commission Study Paper which would be published and made available to those interested. This would achieve two ends. First, it would make the results of our research to date available to the legal profession and to the judiciary. This may assist them in coping with any problems that arise in the future respecting the applicability of English statute law. Second, the publication of a Study Paper may stimulate independent research on this topic and result in the partial fulfillment of our original objectives for the study.

4. Civil Procedure Topics

(a) *The Review of Civil Jury Awards*

Although the role of the civil jury is to make findings of fact in the case before it, in certain circumstances the law may permit the trial judge to take the case away from the jury or to direct a new trial. The Court of Appeal also has jurisdiction in some cases to review jury awards. The circumstances when the trial judge or the Court of Appeal may intervene, however, are fairly circumscribed and, even where the circumstances clearly warrant judicial intervention, the procedures which surround it and the results which flow from it often result in unnecessary cost and expense to the parties.

In September 1984, a final Report was submitted which recommended that the presiding Trial Judge be given a limited jurisdiction to review the award of a civil jury in respect of *quantum*. This jurisdiction would be comparable to that presently exercised by the Court of Appeal. This recommendation would have its greatest impact with respect to personal injury claims. It was also recommended that juries be given information respecting damage awards in similar cases. Adoption of this practice might significantly reduce the need for any review of civil jury awards.

(b) *Settlement Offers*

British Columbia Supreme Court Rules provide a number of mechanisms designed to facilitate the compromise of litigation. These include offers to settle and payments into court. Given the pressure on the courts resulting from the number of disputes which proceed to trial, it is important that these mechanisms function properly in encouraging parties to negotiate rather than litigate their differences.

In September 1984, the Commission submitted a Report which set out a thorough evaluation and review of these mechanisms including a number of recommendations aimed at their improvement. In particular, recommendations were made to enlarge the current scope of settlement offers so they can be used more effectively by both plaintiff and defendant to encourage negotiation and resolution, without trial, of virtually any dispute that may arise.

5. The Effect of Testamentary Instruments

In several previous Reports, the Commission has examined problems existing in the law of succession. Our previous work has focused on legislation effecting succession rights, and ensuring that technical rules do not prevent the courts from giving effect to a testator's will. Even where the testator's original intent is beyond dispute, events may occur which render it impossible to give effect to his intent. A beneficiary may predecease the testator. Property disposed of by will may have become altered in form. In this part of the Estates Project the Commission will examine a number of issues arising out of such occurrences. In particular, the legal rules concerning lapse, ademption, conversion, election and disclaimer will be examined.

6. Contract Law Topics

(a) *Performance Under Protest*

When two parties to a contract disagree as to the nature or extent of the obligations which it imposes on one party, often the most sensible course is for that party to perform "under protest" in accordance with the wishes of the

other party. The issue of his entitlement to any additional compensation for that performance may be litigated or settled at a later date. The decision of the Supreme Court of Canada in *Peter Keiwit Sons Co. of Canada* v. *Eakins Construction Ltd.*, [1960] S.C.R. 361, 22 D.L.R. (2d) 465, however, raises some doubt as to the circumstances in which this course of action is open.

In May 1984 we circulated a Working Paper on this topic. It was proposed that the right to perform under protest should be clarified by introducing a statutory right of action, based on restitutionary principles, which would give a right of recovery to the person who performed under protest work demanded of him which later proved to be outside the scope of the contract. We are continuing to receive responses to the Working Paper and we hope to submit a final Report on this topic later in 1985.

(b) *Contractual Mistakes*

A tangled and troubled area of contract law is that relating to mistake. This may include mistake as to the terms, subject matter or the identity of the parties involved. A mistake may be common, mutual, or unilateral.

In New Zealand, legislation has been enacted aimed at clarifying the rights of the parties in these circumstances. In this project we propose to examine the New Zealand legislation in a Canadian context to determine if similar reform is desirable in British Columbia.

(c) *Deeds and Seals*

In British Columbia today most business arrangements are intended to take effect as simple contracts. Many such arrangements may, however, also be the subject matter of a deed. Simply affixing a seal to a document at the time it is executed may be sufficient to transform a simple contract into a deed.

The effect of making a deed is that a whole body of obscure law in relation to deeds suddenly becomes applicable to the transaction. Different rules of interpretation may apply to the transaction, different parties may be bound by it, a necessity for "delivery" arises, and there are different rules concerning its variation or discharge.

In most cases where the parties execute a deed it is likely that they have done so inadvertently, in the sense that they have no real understanding of the technical, legal implications of affixing a seal. Nonetheless, many documents do take the form of deeds, particularly those executed on behalf of companies which are then impressed with the company seal. The difficulty is that a company seal is generally regarded as a mark of authentication, in the nature of the company's "signature." The seal is affixed to what otherwise would be a simple contract without any person involved in the transaction realizing the full import of what has been done.

In most cases nothing turns on the fact that a document has been executed as a deed. The parties treat it as though it were any other contract. Where, however, something goes awry, ingenious counsel will, from time to time, delve into the ancient learning respecting deeds and come up with a highly technical defence that would not otherwise exist.

This project, added to our program in 1985, will examine the current utility of the law of deeds.

7. Defamation

In 1982, the Commission added a general study of the law of defamation to its program. In the past, the Commission has examined discrete aspects of that body of law such as cable television and defamation and the need for a larger study was pointed out in our Report on that topic (LRC 50).

In 1983, a committee was established under section 4 of the *Law Reform Commission Act*, to consider a number of aspects of the law of defamation and to report to the Commission with recommendations for its improvement. The Committee consists of the following persons:

Bryan Baynham, Chairman	John Laxton
Barrie Adams	Kenneth C. Mackenzie
Professor Jerome Atrens	The Hon. Mr. Justice Murray
Peter Butler, Q.C.	Anthony J. Spence
Rees Brock, Q.C.	The Hon. Mr. Justice Taylor
David Gooderham	Bryan Williams, Q.C.

The work of the Committee is now in its final stages and we expect to receive its Report shortly.

8. Mortgage Law Topics

(a) *Personal Liability under a Mortgage or Agreement for Sale*

The recent drastic increase in the volume of foreclosure applications being heard in our courts has brought to light certain difficulties and deficiencies in the law relating to foreclosure practice. Questions relating to the judgment on the borrower's covenant have proved to be particularly troublesome.

A Working Paper (No. 48) on this topic was circulated in March 1985. Proposals for reform are set out which focus on three separate issues. The first is the rule that the lack of privity of contract between the mortgagee and a transferee of the mortgagor's interest prevents the mortgagee from maintaining an action against the transferee with respect to liability on the covenant, even though the transferee may ultimately be liable to pay through the effect of one or more proceedings for indemnity. It has been proposed that the mortgagee should be permitted to proceed directly against the transferee.

A second issue concerns the duration of the mortgagor's liability to the mortgagee, even after there has been a transfer of the property and the mortgagee has engaged in direct dealings with the transferee up to and including the modification of the mortgage in a manner which amounts to its renewal. Proposals are made concerning the termination of the original mortgagor's personal liability.

Finally, the Working Paper examines the statutory indemnity provided by section 20 of the *Property Law Act* when there has been a transfer of the mortgagor's interest. There are circumstances in which that statutory right of indemnity can operate unfairly and proposals are made to clarify its proper sphere of operation.

We hope to submit a final Report in the coming year.

(b) *Mortgages of Land: The Priority of Further Advances*

A mortgage of land will frequently provide that the land shall stand as security for a number of advances of money from the lender to the borrower.

The lender, however, does not always obtain priority for his further advances over an intervening encumbrancer. In this situation, priorities are governed by section 24 of the *Property Law Act*, R.S.B.C. 1979, c. 340. An examination of that provision suggests that it frequently has an adverse effect with respect to particular kinds of mortgages, such as those given to secure a running account or those given to finance the construction of a building. There also appear to be a number of technical improvements that might be made to the section.

In March of 1985 we circulated a Working Paper (No. 47) on this topic. It was proposed that the mortgage to secure a running account and the construction mortgage should be singled out and accorded special priority. It was proposed that further advances made under a running account mortgage should enjoy a priority over any intervening mortgage. Advances made under a construction mortgage should enjoy priority over virtually any kind of interest which might subsequently arise including additional mortgages, judgments, and builders liens, so long as those advances were applied to the improvement of the mortgaged property. We hope to submit our final Report in the coming year.

(c) *Floating Charges on Real Property*

The creation of a floating charge on personal property is a relatively familiar type of business arrangement. A floating charge is a security device which gives a lender a security interest in a fluctuating mass of property, such as a borrower's inventory or equipment, which may change its identity over time. The essence of such an arrangement is that the borrower is free to sell or encumber this property in the ordinary course of his business, free and clear of the lender's interest, until such time as the charge "crystallizes." When a floating charge crystallizes (usually through some active step taken by the lender as a result of the borrower's default) the charge ceases to float. It descends and then becomes fixed on particular assets of the debtor.

Much less familiar is the floating charge on land.This kind of arrangement is infrequently used, largely because a "fixed" charge on land is regarded as more secure.There is, moreover, a substantial measure of uncertainty as to how a floating charge on land may be accommodated within a Torrens system of land registration. Nonetheless, there are circumstances where a floating charge on land could be seen as fulfilling a need. This might occur, for example, where the borrower is a developer whose inventory consists of various parcels of land in which he wishes to deal freely without the necessity of recording or discharging the lender's interest in the Land Title Office each time a piece of property is bought or sold. The floating charge on land has received limited recognition in our case law (*see Daon Development Corp.* v. *National Trust Co. Ltd.*, (1982) 39 B.C.L.R. 341).

In 1985 this topic was added to our program for examination. The study will address a number of questions. A basic question is whether floating charges should be permitted at all, given the principles underlying our system of land registration. If they are to be permitted, what registration mechanism should apply to them and what should be the priority implications of such registration? What should be the mechanics of crystallization?

If floating charges on land are to receive specific statutory recognition and then characteristics defined by a rational set of rules, this could give rise to a commercially convenient charge and substantially foster the treatment of land as inventory.

9. Legal Change and Prior Rights

Rights and obligations which are acquired under the law as it exists at any given time are not lightly to be tampered with. When the law is consciously changed, as through legislation, the change normally has only a prospective effect. Where legislation is made to operate retroactively, it is usually only after the parties affected have had some notice that the change is going to be implemented or where the issue of prior rights has been carefully considered and a conscious policy decision arrived at.

Sometimes, however, legal change can come suddenly and unexpectedly. It may occur, for example, where an appellate court makes a pronouncement which creates a *de facto* change in the law. It may happen where a statute or bylaw under which parties have acquired rights and obligations is declared to be *ultra vires*. What is, or should be, the legal position of a party who is affected by this kind of legal change? That is the subject matter of a project that was tentatively added to our program in 1984. We are currently in the process of defining more precise terms of reference for a possible study.

10. Family Law Topics

Our previous Annual Report referred to the tentative addition of a number of new topics which touch on family law matters. The decision was characterized as tentative in the sense that a closer examination might reveal that no reform measures were called for or that the Commission is not the proper body to develop recommendations for reform. During the past year we have had an opportunity to explore the content of our proposed studies in greater detail and the results of this process are outlined below.

(a) *The Financial Consequences of Marriage Breakdown: Support Obligations and Family Property*

This is the largest and most difficult of the individual topics which we identified as suitable for potential action by the Commission. As outlined in our previous Annual Report, as a preliminary step the Commission engaged Mr. Michael Karton, of the Vancouver Bar, to prepare a survey of the current jurisprudence and practice surrounding the provisions of the *Family Relations Act* concerning family property and the complementary provisions concerning support obligations. Mr. Karton's paper has been received and considered by the Commission and we now have a somewhat clearer picture of where we might go in pursuing this study. First, it is evident that the subject matter is so large and technical that Commission resources simply will not permit us to proceed on all fronts at once.

What we have done, therefore, is to identify one particular aspect of family property law which can be studied discretely with a view to proceeding on it immediately. That aspect is the power of the courts to alter agreements between spouses relating to family property and is described more fully below.

It is also proposed to recast Mr. Karton's survey into the form of a Study Paper which will highlight the areas of difficulty and uncertainty. It is our hope that this will serve to focus the attention of Judges and litigants and perhaps promote the rationalization of case law in these areas. We also hope that it will stimulate discussion and response which will assist the Commission on particular issues at a later stage of our work.

(b) *Spousal Agreements Respecting Property*

Much of the litigation spawned by the *Family Relations Act* has arisen where spouses have entered into an agreement concerning family property but then, for one reason or another, one of the parties seeks to vary that agreement. Under the *Family Relations Act* the courts have wide powers to vary an agreed distribution of family property but the exercise of these powers has given rise to much confusion and uncertainty.

One source of difficulty are the sections of the Act which confer that jurisdiction. In fact, there are two distinct sections which confer independent but overlapping powers on the courts. The scope of those sections and the kinds of agreements to which they apply is uncertain. The relationship between the two sections is inadequately articulated. The simple act of rationalizing the legislation in this area might significantly reduce and simplify litigation.

A more basic question, however, is whether the powers conferred on the courts to vary these agreements is too broad. While this is not an area where one can be dogmatic about sanctity of contract, it may be that the present legislation pays too little regard to this value. A basic policy of the *Family Relations Act* seems to be to encourage spouses to reach their own agreements concerning the division of family property. This policy is frustrated, however, if the courts are permitted to overturn such agreements regularly.

(c) *The Authority of a Guardian*

The guardian of a child, be that person a parent of the child or some other person holding the status of guardian, will frequently wish to know what rights and obligations flow from that status. These rights and obligations are set out in section 25 of the *Family Relations Act*, but in the most unhelpful terms imaginable:

> **25.** (1) A guardian is both guardian of the person of the child and guardian of the estate of the child.
>
> (2) Subject to this Act, a guardian of the estate of a child has all powers over the estate of a child as a guardian appointed by will or otherwise had on May 19, 1917 in England under Acts 12, Charles the Second, chapter 24, and 49 and 50 Victoria, chapter 27, section 4.
>
> (3) Subject to this Act, a guardian of the person of a child has all powers over the person of the child as a guardian appointed by will or otherwise had on May 19, 1917 in England under Acts 12 Charles the Second, chapter 24, and 49 and 50 Victoria, chapter 27, section 4.

The Act of Charles the Second referred to is the *Tenures Abolition Act, 1660*, a document few guardians will have readily to hand. The need for a modern restatement of the rights and obligations of a guardian is obvious.

In a short Report submitted in January 1985 recommendations were set out which embody such a restatement. In particular, the rights and responsibilities of a guardian of the estate of a child would be assimilated to those of a trustee.

(d) *The Legal Effect of a Spousal Adoption on Succession Rights*

The legal effect of an adoption is to sever all legal ties between the adopted child and its natural parents as new and similar ties are established with the adopting parents. The impact of this rule is unexceptional where the adopting parents are strangers to the child, but that is not the case with every adoption. In many cases the parent who has custody of a child subsequent to a

marriage breakup will remarry. That parent and his or her new spouse will wish to adopt the child. This is often in the best interests of the child and may be done with the blessing of the other natural parent.

One consequence of such an adoption, however, is that the ability of the child to inherit from or through the non-adopting natural parent is limited. For example, if that natural parent should die intestate the child would have no right to succeed on the intestacy and the property could end up going to a distant relative or, if there is no such successor, to the Crown on escheat. It may be questioned whether such a result should necessarily flow from the fact of adoption. In this project we propose to examine the issues at stake more closely and, if desirable, put forward recommendations for reform.

11. A Short Form General Power of Attorney

A problem was drawn to our attention early in 1985. It concerned the acceptability, for land registry purposes, of a certain widely used form of general power of attorney, differing views being taken in different registries. The implications of this development were such that we thought immediate action was required. Accordingly in late March a minor Report (LRC 79) was submitted which contained recommendations aimed at clarifying the status of such instruments. The full text of the minor Report is set out as Appendix C to this Annual Report.

12. Subjects of Interest

Preliminary research or the gathering of material regularly proceeds on a number of matters which are not yet part of the Commission's program. In most cases this is to determine if a particular topic is appropriate for formal inclusion in the program as a Commission project. Many of these matters which are under preliminary consideration arise out of particular suggestions made, and problems drawn to the Commission's attention, by the legal profession and members of the public.

V ACTION ON COMMISSION RECOMMENDATIONS

In our last Annual Report concern was expressed about the growing gap between the pace at which recommendations for law reform were emerging in our various Reports, and the pace at which legislation implementing those recommendations was being brought forward. We also expressed our encouragement on learning of remarks made by the Attorney General in the Legislature on April 5, 1984 expressing his commitment to the work of the Commission and raising the possibility of bringing forward a number of recommendations in an omnibus Bill.

The promise held out in those remarks came to fruition in February 1985 with the introduction of Bill 42, the *Law Reform Amendment Act, 1985*. On the introduction of the Bill the Attorney General issued a news release which contained the following comments:

> The Attorney General, the Honourable Brian Smith today introduced in the Legislature Bill 42, the *Law Reform Amendments Act, 1985*. This Bill implements the recommendations contained in seven Reports of the Law Reform Commission of British Columbia and reflects the commitment he made to the House in April, 1984 that such an omnibus law reform Bill would be introduced. This is a product of an ongoing review the Attorney General has undertaken of the Reports of the Commission and a further product of this review will be reflected later this Spring

with the introduction of another omnibus Bill dealing with recommendations of the Law Reform Commission, the Uniform Law Conference of Canada and the work of his Ministry in the field of family law.

A review of other Reports of the Law Reform Commission continues with the intention that suitable recommendations will be given effect through legislation during future Sessions of the Legislature.

We take great pleasure in this important affirmation of the role played by the Commission in modernizing and improving our laws. It is with equal pleasure that we note the support which the *Act* received from the official opposition in the Legislature and the fair and non-partisan approach taken to its contents.

The recommendations implemented by the *Act* are as follows:

Infants Act Amendments: Minors' Contracts

Amendments to the *Infants Act* were introduced which implemented the recommendations made in the Commission's 1976 Report on *Minors' Contracts* (LRC26).

Jury Act Amendments: Peremptory Challenges

These amendments implemented the recommendations made by the Commission in 1983 in its Report on *Peremptory Challenges in Civil Jury Trials* (LRC 63) to provide guidance as to entitlement to challenges when multiple parties are involved.

Law and Equity Act Amendments: Agreements for Sale

These amendments implement recommendations made by the Commission in 1975 in its Report on *Security Interests in Real Property: Remedies on Default* (LRC 24). The effect is to assimilate the default remedies of a vendor under an agreement for sale to those of a mortgagee.

Law and Equity Act Amendments: Section 33

The Act repealed section 33 of the *Law and Equity Act* which provided for security for costs in *qui tam* actions. A minor recommendation to this effect was made by the Commission in 1974 in its Report on *Limitations* (LRC 15).

Law and Equity Act Amendments: Statute of Frauds

The recommendations made by the Commission in 1977 in its Report on the *Statute of Frauds* (LRC 33) were implemented through the repeal of the *Statute of Frauds* and the addition, to the *Law and Equity Act*, of new provisions respecting the requirement of written evidence of contracts in relation to land and contracts of guarantee.

Liable and Slander Act Amendments: Cable Television

The recommendations made by the Commission in its 1981 Report on *Cable Television and Defamation* (LRC 50) were implemented through a provision which assimilates the legal position of cable television operators to that of conventional broadcasters for the purposes of defamation law.

Sale of Goods in Bulk Act: Repeal

In its 1983 Report on *Bulk Sales Legislation* (LRC 67) it was recommended that the *Sale of Goods in Bulk Act* be repealed. The legislation has done so.

The *Law Reform Amendment Act, 1985* received royal assent on February 21, 1985, and its provisions come into force by regulation of the Lieutenant Governor in Council.

The 1984 session of the Legislature also saw some action on Commission recommendations. Two Bills were introduced to amend the *Builders Lien Act*. They incorporated provisions implementing certain recommendations made in our 1972 Report on the *Mechanics Lien Act* (LRC 7):

(a) Equipment renters should be permitted to assert claims under the Act.

(b) A filing in the County Court Registry should no longer be required with respect to claims arising in the interior of the Province.

Two omnibus Bills also implemented the recommendations respecting the impact of interest on the monetary jurisdiction of the County and Provincial courts made in our Report on that topic (LRC 59, 1982). The proper titles and citations of these enactments may be found in Appendix A.

One further development in 1984 was the introduction of Bill 30, a new *Expropriation Act*, which embodied most of the recommendations made in our Report on *Expropriation* (LRC 5, 1971). The Bill was given first reading and allowed to lapse. We hope to see it reintroduced during the present session of the Legislature.

Finally, the recommendation made in our *Minor Report on the Jurisdiction of Local Judges: Stays of Execution and Instalment Orders*, (LRC 72, 1984) has been implemented through an appropriate amendment to the Rules of Court. The amendment enlarges the jurisdiction of a Local Judge of the Supreme Court to order a stay of execution or payment by instalments.

VI THE AVAILABILITY OF COMMISSION PUBLICATIONS

All final Reports on major topics issued by the Commission have been published in a typeset format, with the intention that they be available to the public. Our Annual Reports are distributed by the Commission and are available on request and free of charge so long as stocks last.

From time to time the Commission also submits minor Reports, in the form of a letter to the Attorney General. These minor Reports are usually reproduced in full as appendices to the Annual Report which covers the period in which the minor Report was made.

The Provincial Queen's Printer is responsible for the distribution of all Reports made by the Commission on particular topics. A nominal charge is made for copies of those Reports. Orders and inquiries as to prices should be directed to:

The Queen's Printer
Publications
Parliament Buildings,
Victoria, B.C., V8V 4R6
Telephone: 387-1901

A number of our early Reports are now out of print and are not available for purchase. Those Reports are indicated with an asterisk in Appendix A.

Working Papers are produced in a typescript format by an offset process and the Commission is responsible for their distribution. Working Papers are

usually produced in limited quantities and our supplies of them are invariably exhausted by, or shortly after, their initial distribution. Usually we are unable to respond to requests either for copies of past Working Papers or to be placed on a mailing list to receive copies of all Working Papers.

VII ACKNOWLEDGEMENTS

As we have pointed out in previous Annual Reports, our policy of doing the greater part of our research work internally, rather than relying upon outside consultants, has placed a heavy burden of responsibility upon the shoulders of our permanent staff. As usual they have responded to the challenge with energy, enthusiasm and careful scholarship. We wish to express our sincerest thanks to the members of our current research staff, Messrs. Thomas G. Anderson, Counsel to the Commission, and Frederick W. Hansford, Staff Lawyer, for the loyalty and industry they have devoted to the affairs of the Commission. We also wish to acknowledge the contribution of Mr. Don Moir, a law student who worked with us for the summer months.

Our support staff also make a notable contribution to the work of the Commission. They bring intelligence and efficiency to their duties and share a concern that our work should be of the highest quality in every respect. Our support staff presently consists of Sharon St. Michael, Secretary to the Commission, and Terry Lesperance, clerk-stenographer. We thank them for their efforts on our behalf.

The Judges' Law Reform Committee is important to our operation. This Committee provides a continuing point of contact with the judiciary. The members of the Committee are The Honourable Mr. Justice Macfarlane of the Court of Appeal (Chairman), The Honourable Mr. Justice Taylor, The Honourable Mr. Justice Spencer and The Honourable Mr. Justice Bruce Macdonald of the Supreme Court, The Honourable Judge Huddart of the Vancouver County Court, and His Honour Judge Collings of the Provincial Court. The members of the Committee assist us through responding to our Working Papers and other consultative documents by calling to our attention defects in the law that they are well-situated to identify. They bring a unique perspective to bear on our work and we are grateful for their participation.

The support which we have received from the organized bar and its individual members in past years has continued. We rely heavily on the assistance of the legal profession in a number of ways. At the research stage of our projects, individual lawyers assist us in gathering facts and in acting as a "sounding board" with respect to various approaches to difficult issues. Requests for help of this kind are invariably the subject of a generous response. At the more formal stage of consultation, various Sections of the British Columbia Branch of the Canadian Bar Association assist us in our deliberations with thoughtful submissions on the various proposals and tentative conclusions set out in our Working Papers. We wish to thank all members of the bar who gave generously of their time and experience in the past year.

In the past year we have also explored ways and means of bringing about a closer relationship between the Commission and the Continuing Legal Education Society of British Columbia (C.L.E.). We regard this as an important development. First, C.L.E. courses frequently focus attention on areas in which the law is deficient and Commission work would be useful. Second, C.L.E.'s excellent channels of communication to the legal profession, both through its courses and its mailings, represent a potential link between the

Commission and the legal profession which might be more fully utilized to the benefit of both. Our particular thanks go to Mr. Jack Huberman, Executive Director of C.L.E. for his assistance and advice in the past year.

The two law faculties in the Province have also greatly assisted us in our consultation processes. Procedures have been established which facilitate and co-ordinate comment from faculty members. The response we have received in this way has been most valuable. We wish particularly to thank Dean Peter Burns of the Faculty of Law, University of British Columbia and Dean L.R. Robinson of the Faculty of Law, University of Victoria and their colleagues.

Two agencies of Government also call for special mention. The first is the Office of Legislative Counsel. Their personnel are invariably responsive and helpful when we request assistance in the preparation of proposed legislation. The work leading up to the *Law Reform Amendment Act, 1985*, brought us into close contact with them, and we particularly wish to thank Mr. Allan Roger, Chief Legislative Counsel, and Mr. Cliff Watt.

The other agency is the Queen's Printer who is responsible for printing our Reports. Its personnel bring a high level of skill, dedication and professionalism to the work they do for us and we are pleased to take this opportunity to thank them and acknowledge their important role.

We also wish to repeat our sincere thanks to the Law Foundation of British Columbia for responding positively to our requests for funding. The support of law reform is listed as one of the Foundation's objects in the statute under which it is constituted. In enabling the Law Reform Commission to carry on with its functions, the Law Foundation has truly fulfilled that object and rendered an important service to the people of the Province. Our particular thanks go to Mr. Norman Severide, Chairman of the Foundation, and Mr. Michael Jacobsen, its Executive Director.

Finally, we wish to thank you Mr. Attorney and all those within the Ministry who, during the period under review, in their dealings with the Commission on a day-to-day basis, have contributed to our work and made life easier. In particular, our thanks go to The Honourable E.N. Hughes, Q.C., the Deputy Attorney General; Associate Deputies, Messrs. Robert Adamson and Frank Rhodes and to Mr. Ken Horodyski, Acting Director, Information Services. All have, in one way or another, assisted us greatly.

ARTHUR L. CLOSE
RONALD I. CHEFFINS
MARY V. NEWBURY

April 18, 1985

Appendix A

REPORTS AND RECOMMENDATIONS MADE BY THE LAW REFORM COMMISSION OF BRITISH COLUMBIA

No.	Title	Date	Recommendations Implemented in Whole or in Part by
1	Limitations—Abolition of Prescription*	Dec. 1970	*Land Registry (Amendment) Act, 1971*, S.B.C. 1971, c. 30, s. 8 (see now *Land Title Act*, R.S.B.C. 1979, c. 219, s. 24).
2	Annual Report, 1970*	Dec. 1970	Not applicable.
3	Frustrated Contracts Legislation*	Feb. 1971	*Frustrated Contracts Act*, S.B.C. 1974, c. 37 (see now *Frustrated Contract Act*, R.S.B.C. 1979, c. 144); *Landlord and Tenant Act*, S.B.C. 1974, c. 45, s. 61(e) (see now *Residential Tenancy Act*, R.S.B.C. 1979, c. 365 s. 8(3)); *Commercial Tenancies Act*, R.S.B.C. 1960, c. 207, s. 34 (see now *Commercial Tenancy Act*, R.S.B.C. 1979, c. 54, s. 33).
4	Debt Collection and Collection Agents*	Mar. 1971	*Debt Collection Act*, S.B.C. 1973 c. 26 (see now *Debt Collection Act*, R.S.B.C. 1979, c. 88).
5	Expropriation*	Dec. 1971	——
6	Annual Report, 1971*	Dec. 1971	Not applicable.
7	Mechanics' Lien Act*	June 1972	*Builders Lien Amendment Act, 1984*, S.B.C. 1984, c. 16, s. 3 [in part]; *Builders Lien Amendment Act (No. 2), 1984*, S.B.C. 1984, c. 17, s. 1 [in part].
8	Deficiency Claims and Repossessions*	June 1972	*Conditional Sales Act*, S.B.C. 1973, c. 19 (see now *Sale of Goods on Condition Act*, R.S.B.C. 1979, c. 373); *Bills of Sale Act*, S.B.C. 1973, c. 7 (see now *Chattel Mortgage Act*, R.S.B.C. 1979, c. 48).
9	Legal Position of the Crown*	Dec. 1972	*Crown Proceedings Act*, S.B.C. 1974, c. 24 (see now *Crown Proceeding Act*, R.S.B.C. 1979, c. 86); *Interpretation Act*, S.B.C. 1974, c. 42, s. 13 (see now *Interpretation Act*, R.S.B.C. 1979, c. 206, s. 14).
10	Annual Report, 1972	Dec. 1972	Not applicable.
11	Interim Report on Evidence*	Feb. 1973	*Attorney-General Statutes Amendment Act, 1975*, S.B.C. 1975, c. 4, s. 6 (see now *Evidence Act*, R.S.B.C. 1979, c. 116, ss. 37, 38).

* Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
12	Pre-Judgment Interest*	May 1973	*Prejudgment Interest Act*, S.B.C. 1974, c. 65 (see now *Court Order Interest Act*, R.S.B.C. 1979, c. 76).
13	Landlord and Tenant—Residential Tenancies*	Dec. 1973	*Landlord and Tenant Act*, S.B.C. 1974, c. 45 (see now *Residential Tenancy Act*, S.B.C. 1984, c. 10).
14	Annual Report, 1973	Jan. 1974	Not applicable.
15	Limitations—General*	Mar. 1974	*Limitations Act*, S.B.C. 1975, c. 37 (see now *Limitations Act*, R.S.B.C. 1979, c. 236); *Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, s. 6 [in part].
16	Costs of Accused on Acquittal*	June 1974	——
17	Procedure Before Statutory Bodies*	Nov. 1974	——
18	A Procedure for Judicial Review of the Actions of Statutory Bodies*	Dec. 1974	*Judicial Review Procedure Act*, S.B.C. 1976, c. 25 (see now *Judicial Review Procedure Act*, R.S.B.C. 1979, c. 209).
19	Annual Report, 1974	Jan. 1975	Not applicable.
20	Costs of Successful Unassisted Lay Litigants*	Apr. 1975	——
21	The Termination of Agencies*	Apr. 1975	——
22	Powers of Attorney and Mental Incapacity*	May 1975	*Attorney-General Statutes Amendment Act*, 1979, S.B.C. 1979, c. 2, s. 52 (see now *Power of Attorney Act*, R.S.B.C. 1979, c. 334, s. 7).
23	Personal Property Security*	Oct. 1975	——
24	Security Interests in Real Property: Remedies on Default*	Dec. 1975	*Miscellaneous Statutes (Court Rules) Amendment Act*, S.B.C. 1976, c. 33, s. 94(a) [in part] (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 16); Supreme Court Rules, Rule 50 (11), 3(2) [in part]; *Land Titles Act*, S.B.C. 1978, c. 25 [in part] (see now *Land Title Act*, R.S.B.C. 1979, c. 219, ss. 224–225); *Attorney General Statutes Amendment Act*, S.B.C. 1980, c. 1, s. 15 (see now, *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 21.1) [in part]; *Property Law Act*, R.S.B.C. 1979, c. 340, s. 28 [in part]; *Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, s. 5 (see now, *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 16.1) [in part].

* Report is out of print.

No	Title	Date	Recommendations Implemented in Whole or in Part by
25	Annual Report, 1975	Jan. 1976	Not applicable.
26	Minors' Contracts*	Feb. 1976	*Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, ss. 1, 2, 10 (see now *Infants Act*, R.S.B.C. 1979, c. 196, Part 2.1 (ss. 16.1–16.11)).
27	Extra-Judicial Use of Sworn Statements*	Apr. 1976	*See*, e.g., *Mineral Act, 1977*, S.B.C. 1977, c. 54, s. 20(2).
28	Rule in *Bain* v. *Fothergill**	June 1976	*Conveyancing and Law of Property Act*, S.B.C. 1978, c. 16, s. 33 (see now *Property Law Act*, R.S.B.C. 1979, c. 340, s. 33).
29	Annual Report, 1976	Dec. 1976	Not applicable.
30	The Rule in *Hollington* v. *Hewthorn**	Jan. 1977	*Evidence Amendment Act, 1977*, S.B.C. 1977, c. 70 (see now *Evidence Act*, R.S.B.C. 1979, c. 116, ss. 15(3), 80, 81).
31	Waiver of Conditions Precedent in Contracts*	Apr. 1977	*Attorney-General Statutes Amendment Act, 1978*, S.B.C. 1978, c. 11, s. 8 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 49).
32	Proof of Marriage in Civil Proceedings*	Apr. 1977	*Attorney-General Statutes Amendment Act, 1979*, S.B.C. 1979, c. 2, s. 18 (see now *Evidence Act*, R.S.B.C. 1979, c. 116, s. 58).
33	The *Statute of Frauds**	June 1977	*Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, ss. 7, 8 (see now, *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 54)
34	Tort Liability of Public Bodies*	June 1977	——
35	*Offences Against the Person Act, 1828*, Section 28*	Aug. 1977	*Attorney-General Statutes Amendment Act, 1978*, S.B.C. 1978, c. 11, s. 8 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 3).
36	Annual Report, 1977	Jan. 1978	Not applicable.
37	*Absconding Debtors Act* and *Bail Act*: Two Obsolete Acts*	Mar. 1978	*Attorney-General Statutes Amendment Act, 1978*, S.B.C. 1978, c. 11 s. 8, ss. 1, 2.
38	*The Replevin Act**	May 1978	Rules of Court, Rule 46 as amended Nov. 26, 1981 by B.C. Reg. 467/81. *Attorney General Statutes Amendment Act, 1982*, S.B.C. 1982, c. 46, ss. 3–6, 25, 37–41.
39	The *Attachment of Debts Act**	Oct. 1978	——
40	Execution Against Land*	Oct. 1978	——

* Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
41	Annual Report, 1978	Jan. 1979	Not applicable.
42	Creditor's Relief Legislation: A New Approach	Jan. 1979	———
43	Guarantees of Consumer Debts	June 1979	*Consumer Protection Amendment Act, 1980*, S.B.C. 1980, c. 6, s. 3. [in part].
44	Parol Evidence Rule	Dec. 1979	———
45	Annual Report 1979 (Limitation Periods in Actions Against Estates)	Jan. 1980	*Attorney General Statutes Amendment Act, 1980* S.B.C. 1980, c. 1, ss. 7, 17 (see now *Estate Administration Act*, R.S.B.C. 1979, c. 114, s. 66(4)(b); *Negligence Act*, R.S.B.C. 1979, c. 298, s. 7(3).).
46	Civil Litigation in the Public Interest	June 1980	———
47	Calculation of Interest on Foreclosure	Sept. 1980	*Attorney General Statutes Amendment Act, 1981*, S.B.C. 1981, c. 10, s. 28 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 18.1.).
48	The Recovery of Unauthorized Disbursements of Public Funds	Sept. 1980	*Financial Administration Act*, S.B.C. 1981, c. 15, s. 67.
49	Annual Report 1980 (Discount Rates)*	Jan. 1981	*Attorney General Statutes Amendment Act, 1981*, S.B.C. 1981, c. 10, s. 30 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 51).
50	Cable Television and Defamation	March 1981	*Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, s. 9 (see now *Libel and Slander Act*, R.S.B.C. 1979, c. 234, s. 1 ["broadcasting"].
51	Benefits Conferred Under a Mistake of Law	Sept. 1981	———
52	The Making and Revocation of Wills	Sept. 1981	———
53	Distress for Rent	Nov. 1981	———
54	Annual Report 1981	Jan. 1982	Not applicable.
55	Arbitration	May 1982	———
56	Presumptions of Survivorship	Nov. 1982	———
57	Crown as Creditor: Priorities and Privileges	Nov. 1982	———
58	Interpretation of Wills	Nov. 1982	———

* Report is out of print.

No	Title	Date	Recommendations Implemented in Whole or in Part by
59	Interest and Jurisdictional Limits in the County and Provincial Courts [Printed as an Appendix to LRC 60]	July 1982	*Miscellaneous Statutes Amendment Act (No. 1), 1984*, S.B.C. 1984, c. 25, s. 63 (see now *Small Claims Act*, R.S.B.C. 1979, c. 387, s. 2(3)); *Miscellaneous Statutes Amendment Act (No. 2), 1984*, S.B.C. 1984, c. 26, s. 2 (see now *County Court Act*, R.S.B.C. 1979, c. 72, s. 29(2)).
60	Annual Report 1982	Jan. 1983	Not applicable.
61	Standing of a Common Law Spouse to Apply Under the *Family Compensation Act* [Printed as an Appendix to LRC 73]	Jan. 1983	——
62	Interspousal Immunity in Tort	March 1983	——
63	Peremptory Challenges in Civil Jury Trials	June 1983	*Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, ss. 3, 4 (see now, *Jury Act*, R.S.B.C. 1979, c. 210, ss. 18, 18.1).
64	Breach of Promise of Marriage	Aug. 1983	——
65	Foreign Money Liabilities	Sept. 1983	——
66	Competing Rights to Mingled Property: Tracing and the Rule in Clayton's Case	Sept. 1983	——
67	Bulk Sales Legislation	Oct. 1983	*Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, ss. 11–13.
68	Intentional Interference with Domestic Relations	Nov. 1983	——
69	Illegal Transactions	Nov. 1983	——
70	Statutory Succession Rights	Dec. 1983	——
71	Minor (Interim) Report on the *Land (Wife Protection) Act* [Printed as an Appendix to LRC 73]	Jan. 1984	——
72	Minor Report on The Jurisdiction of Local Judges: Stays of Execution and Instalment Orders [Printed as an Appendix to LRC 73]	Feb. 1984	Rules of Court, Rule 42(25) as amended by B.C. Reg. 18/85, s. 15 (effective April 1, 1985).
73	Annual Report 1983/84	April 1984	Not applicable.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
74	Covenants in Restraint of Trade	April 1984	_____
75	Review of Civil Jury Awards	Sept. 1984	_____
76	Compensation for Non-Pecuniary Loss	Sept. 1984	_____
77	Settlement Offers	Sept. 1984	_____
78	The Authority of a Guardian	Jan. 1985	_____
79	A Short Form General Power of Attorney [Printed as an Appendix to LRC 80]	March 1985	_____
80	Annual Report 1984-85	April 1985	Not applicable.

Appendix B

MATTERS UNDER CONSIDERATION BY LAW REFORM COMMISSION OF BRITISH COLUMBIA

1. Debtor-Creditor Relationship Topics
   (a) Court Order Interest Act
   (b) Shared Liability
   (c) Execution Against Shares and Securities
   (d) Reviewable Transactions
   (e) Set-Off Against Equitable Assignees
2. Applicability of English Statute Law
3. The Effect of Testamentary Instruments
4. Contract Law Topics
   (a) Performance Under Protest
   (b) Contractual Mistakes
   (c) Deeds and Seals
5. Defamation
6. Mortgage Law Topics
   (a) Personal Liability under a Mortgage or Agreement for Sale
   (b) Mortgages of Land: The Priority of Further Advances
   (c) Floating Charges on Real Property
7. Legal Change and Prior Rights
8. Family Law Topics
   (a) The Financial Consequences of Marriage Breakdown: Support Obligations and Family Property
   (b) Spousal Agreements Respecting Property
   (c) The Authority of a Guardian
   (d) The Legal Affect of a Spousal Adoption on Succession Rights

Appendix C

MINOR REPORT (LRC 79)

March 22, 1985

The Hon. Brian R.D. Smith, Esq., Q.C.
Attorney General of the
Province of British Columbia
Parliament Buildings
Victoria, B.C. V8V 1X4

Dear Mr. Attorney:

Re: Minor Report (No. 79):
A Short Form General Power of Attorney

A problem of immediate concern has been drawn to our attention respecting a widely used form of general power of attorney. The efficacy of the words used to create the power has been called into question. In the result, the status of all powers of attorney created in this form, both in British Columbia and in Ontario, and acts done under them, has been rendered somewhat uncertain. The background to this problem is described below.

In 1975 the Law Reform Commission submitted its *Report on Powers of Attorney and Mental Incapacity* (LRC 22).The principal recommendation made was that the law should permit an "enduring power of attorney" which would not terminate on a subsequent legal incapacity relating to the mental condition of the principal. This recommendation was implemented, in substance, through the enactment of section 7 of the *Power of Attorney Act*, R.S.B.C. 1979, c. 334.

A minor recommendation made in that Report was that the Act should provide a "standard form" of general power of attorney which would eliminate much of the incomprehensible verbiage contained in most standard form Powers of Attorney sold through legal stationers. A suggested statutory form was set out as Appendix C to the Report. That recommendation was not implemented.

Notwithstanding that the recommendation for a statutory form was not implemented, it appears that a number of practitioners have adopted, in part, the language of the Commission's suggested general power of attorney in preparing these documents for their clients. The Commission has recently received correspondence from a practitioner who has drawn to our attention the fact that a power of attorney in this form has recently been rejected by the registry officials of the Victoria Land Title Office, although similarly worded documents have been routinely accepted by the registry officials in the Kamloops, Nelson and New Westminster offices. The basis of the rejection was stated to be that the operative words used were insufficient to create a general power of attorney. Those operative words, drawn directly from the Commission's suggested form, authorize the attorney:

> "to do on my behalf anything that I can lawfully do by attorney."

This language is not the Commission's own invention. It is, in fact, derived from an earlier version of legislation ultimately enacted in Ontario in 1979 which provides for a statutory form of general Power of Attorney. The operative language in the Ontario form is "to do on my behalf anything that I

can lawfully do by an attorney." This language is virtually identical to that suggested by the Commission.

We offer no view as to whether, on a strictly technical basis, the rejection of this formulation by the Victoria Land Title Office was soundly based. The result, however, is unfortunate.

First, this determination casts a shadow over all powers of attorney previously prepared in this form and which have been relied upon by principals, attorneys, and third parties. It raises the spectre that an unknown number of transactions might be vitiated if the sufficiency of the language were to be tested in a court and result in an adverse ruling.

Second, since the statutory form used in Ontario employs language virtually identical to that which has been rejected, powers of attorney prepared in Ontario, in conformity with the Ontario legislation, will not be acceptable for all purposes in British Columbia. Such a departure from comity can only be justified if there is some overriding rule of local public policy which requires it. We know of none.

It is our conclusion that measures should be taken to amend the *Power of Attorney Act* in a way which removes any doubt as to the validity of powers of attorney in this form. The Ontario legislation provides a suitable model. We recommend that:

1. A provision similar to the following be added to the *Power of Attorney Act*:
   (1) A general power of attorney that is substantially in Form 1 is sufficient authority for the donee of the power or, where there is more than one donee, for the donees acting jointly or acting jointly and severally, as the case may be, to do on behalf of the donor anything that the donor can lawfully do by an attorney, subject to such conditions and restrictions, if any, as are contained therein.
   (2) Subsection (1) applies to a power of attorney made before this section comes into force.

2. The form referred to in recommendation 1 should be as follows:

Form 1

Form of Power of Attorney

THIS GENERAL POWER OF ATTORNEY is given on .....
(Date)
19..... by ..... of .....
(Donor)
I appoint ..... of .....([or]
(Attorney)
..... of ..... and .....
(Attorney) (Attorney)
of ..... jointly [or] jointly and severally)
to be my attorney(s) in accordance with the *Power of Attorney Act* and to do on my behalf anything that I can lawfully do by an attorney.

[Here paragraphs may be inserted setting out conditions and restrictions on the power of attorney, limitations on its duration and a provision for its continuation for the purposes of section 7 of the *Power of Attorney Act*.]

WITNESSED BY:

.....
(Signature of Witness)

.....
(Name of Witness)

.....
(Address)

.....
(Donor)

Implementation of this recommendation would have several beneficial effects. It would remove the uncertainty which currently tinges the status of powers of attorney that have been created in the Province in the recommended form. It would validate similar powers of attorney emanating from Ontario. It would eliminate an undesirable inconsistency of practice among the Land Title Offices. Finally, it would encourage the use of simplified drafting in a type of document that is currently notorious for obscure and excessive language.

This letter is to be taken as a minor Report (No.79) of the Law Reform Commission recommending a change in the law as herein set out. This recommendation was approved by the Commission at a meeting on March 21, 1985.

Yours sincerely,
Arthur L. Close
Chairman

ALC/ss

Appendix D

COMMISSION WORK REVIEWED AND CITED

Following is a partial list of reviews, articles, books, and cases in which the Commission's work has recently been referred to or discussed.

(a) *Articles and Reviews*

W.A. Bogart, "Developments in the Canadian Law of Standing," (1984) 3 Civ. J.Q. 339.

W.A. Bogart, "Review - Law Reform Commission of British Columbia, Report on the Crown as Creditor: Priorities and Privileges," (1984) 48 C.B.R. 181.

Bowles and Whalen, "Working Paper on Foreign Money Liabilities," (1982) 60 Can. B. Rev. 805.

F.M. Catzman, "Law Reform Commission of British Columbia, Bulk Sales Legislation, Working Paper No. 40," (1983) 8 Can. Bus. L.J. 109.

B. Crawford, "The Legal Aspect of Money, 4th ed., by F.A. Mann," (1982-3) 7 Can. Bus. L.J. 368.

G.H.L. Fridman, "Law Reform Commission of British Columbia, Competing Rights to Mingled Property: Tracing and the Rule in Clayton's Case, Working Paper No. 36," (1982-83) 7 Can. Bus. L.J. 353.

G.H.L. Fridman and J.G. McLeod, *Restitution*, Toronto, The Carswell Company Limited, 1982 at 166 to 172.

F.W. Hansford, Book Review, "Restitution by G.H.L. Fridman and James G. McLeod, . . . Unjust Enrichment by Georege B. Klippert. . . " (1984) 18 U.B.C.L. Rev. 177

G.B. Klippert, *Unjust Enrichment*, Toronto, Butterworth's, 1983 at 152 to 156.

J.K. Maxton, "Execution of Wills: The Formalities Considered," [1982] 1 Canterbury L. Rev. 393.

F. Meisel, "British Columbia Law Reform Commission Report on Arbitration," [1983] Civ. J.Q. 197.

S.A. Rae, "Inflation and the Law of Contracts and Torts," (1982) 14 Ottawa L. Rev. 465.

S. Schwartz "Review - Law Reform Commission of British Columbia, Report on Illegal Contracts," (1985) 10 Can. Bus. L.J. 83.

L.M. Sherwood, "Contracts - Illegality and Section 305.1 of the Criminal Code," (1983) 61 Can. B. Rev. 866.

W.M.B. Voroney, Case Comment on *Stevens* v. *Quinney*, (1980) 101 D.L.R. (3d) 289, [1979] 5 W.W.R. 284, (1980) 5 Sask. R. 219; (1980) 60 Can. B. Rev. 688.

S.M. Waddams, "Foreign Money Liabilities: Law Reform Commission of British Columbia, Working Paper No. 33," (1981-82) 6 Can. Bus. L.J. 352.

S.M. Waddams, Law Reform Commission of British Columbia, Illegal Contracts, Working Paper No. 38, (1982-83) 7 Can. Bus. L.J. 361.

D.M. Waters, "Trusts in the Setting of Business, Commerce and Bankruptcy," (1983) 31 Alta. L. Rev. 395.

B.H. Wildsmith, "Report on Civil Litigation in the Public Interest," (1982-83) 7 Dalhousie L.J. 463.

(b) *Cases*

Aktary v. *Dobroslavic et al*, (1984) 48 B.C.L.R. 26 (B.C.S.C.).

Air Canada v. *A.G.B.C.*, (1983) 41 B.C.L.R. 41 (B.C.S.C.).

Babb v. *Capital Business Machines Ltd. et al*, [1984] 5 W.W.R. 628 (Y.T.C.A.).

David Grute & Sons Inc. v. *Conbrio Designs Ltd.*, [1982] B.C.D. Civ. 3463-05 (Co. Ct. Van.)

Imperial General Properties Ltd. v. *The Queen*, [1984] 1F.C. 146 (F.C.T.D.).

Latchford v. *Farker*, [1984] B.C.D. Civ. 3579-04 (B.C.S.C.).

Pickering et al v. *Deakin, Deakin, Dimmock & Topolite Distributros Ltd.*, [1985] 1 W.W.R. 289 (B.C.C.A.).

R. in Right of B.C. v. *Yu et al*, (1984) 55 B.C.L.R. 329 (B.C.S.C.).

Rutherford Bazett & Co. v. *Penticton Pub Ltd.*, (1983) 50 B.C.L.R. 21, 41 C.P.C. 226, (B.C.S.C.).

Sehlstrom v. *Pich*, (1983) 36 C.P.C. 79 (B.C.S.C.).

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